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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/774,828

07/06/2004

Jonathan Martinek

2821

9771

50855 7590 03/09/2007

UNITED STATES SURGICAL,  
A DIVISION OF TYCO HEALTHCARE GROUP LP  
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EXAMINER

SWIGER III, JAMES L

ART UNIT

PAPER NUMBER

3733

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/09/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/774,828	<b>Applicant(s)</b> MARTINEK ET AL.	
	<b>Examiner</b> James L. Swiger	<b>Art Unit</b> 3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 18 December 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 15-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/6/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 4-6 and 12-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Benderev et al. (US Patent 5,439,467). Benderev et al. disclose an instrument kit capable of performing a repair procedure having at least one template (see Fig. 1) that has an elongated body that defines an X, Y and Z axis. The elongated body would be sufficient to access a meniscal repair, and likewise has a slim, reduced profile for use. Likewise, after removal, a correspondingly-dimensioned meniscal repair device could be introduced along that same path created by the templating device. Benderev et al. also disclose what may be considered an atraumatic tip (140/120) designed to produce minimal injury to tissue, and an elongate body that has an end portion that is obliquely, or offset at an angle, arranged with respect to an x-axis (see bent end in Fig. 1a). Note that the device is capable of being offset in a z-axis, depending on how one looks at it. Benderev et al. also disclose at least two templates (compares figs. 1 and 1a), each body defining X, Y, and Z axes. The elongate body of the first template (Fig. 1) is substantially linear, while the end portion of the second template is considered obliquely arranged (Fig. 1a), and may be considered offset in a Y-axis.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

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obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 10-11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Benderev et al. '467 in view of Barriero et al. (US Patent 6,666,872). Benderev et al. disclose the claimed invention except for a width of an elongate body being substantially less than the height, or having at least a first, second or third disposable loading unit. Also, Benderev et al. does not disclose a third template with an elongate body that may be offset in the direction of the Z-axis.

Barriero et al. disclose an elongate body having a width less than a height (note that in Fig. 3, the elongate body may be considered from a side, where the width would be less than the height, a first, second and third disposable loading units (14, embodiments in Figs. 3, 4 and 5) that define appropriate axes (Col. 2, lines 37-61) and also have within the loading units appropriate templates (76), one of which may be a third template (wherein the template 76 is offset differently in Fig. 5 than in Fig. 4, the template in Fig. 5, may be a third template in the z-direction.) See also Col. 4, lines 24 - 51, where the elongate bodies may facilitate introduction into the operative site and be bent at different angles, therefore with respect to different axes). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Benderev et al. '467 having at least a width of an elongate body

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being substantially less than the height, or having at least a first, second or third disposable loading unit in view of Barriero et al. to better orient the device when performing a meniscal repair procedure.

Claims 8-9 rejected under 35 U.S.C. 103(a) as being unpatentable over Benderev et al. '467 in view of Neufeld (US Patent 3,842,824). Benderev et al. disclose the claimed invention except for a removably attachable handle that may be attached at a proximal end of a template. Neufeld discloses a handle (22) that is removably attachable to an insertion device such as a pin or template so that it may access another template or insertion device as needed (see also Col. 3, lines 35-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Benderev et al. having at least a removably attachable handle in view of Neufeld to better use the device in surgery for repair.

#### ***Allowable Subject Matter***

Claim 7 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed 12/18/2006 have been fully considered but they are not persuasive. With regards to the arguments directed to a 'template' Benderev et al. is still considered to at least be a template with respect to what is required for having multiple axes, and additionally functions as well as a guide to the particular area. The

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prior art discloses that a suture is used, however, still acts as a template for accessing that particular area, similarly to how access may be provided for meniscal repair.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

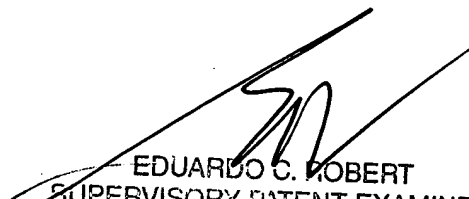
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*JS 3/5/07*

JLS

  
EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER